

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3958 of 2004

KAVITA ARORA
V/S
STATE & ORS

Mr. KISHAN BANSAL, for the petitioner

Date of Order : 23.9.2004

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the petitioner.

By this writ petition, the petitioner seeks to challenge the order Annexure-7 dt. 26.8.2003 whereby the petitioner's request for being given a compassionate appointment on account of death of her father late Shri Manoharlal Arora has been declined in view of the provisions of Rule 5 of Rajasthan Compassionate Appointment of Dependants of Deceased Government Servants Rules, 1996.

It is contended by the learned counsel that the deceased employee had died while on duty on 12.9.1991, and on 1.10.1991 an application was submitted stating that the dependants of the deceased are minor, therefore, they are not eligible for service, and therefore, the rights of the dependants be kept reserved, till they attain the age of majority. It is, therefore, contended that in view of the Division Bench judgment of this Court reported in Roop Singh Vs. State of Rajasthan reported in RLR 2000(1)-402, in such cases the matter is required to be governed by the Rajasthan (Recruitment of Dependants of Government Servants Dying

While in Service) Rules 1975, hereinafter referred to as the Rules of 1975, and could not be declined on the consideration of the provisions of the Rajasthan Compassionate Appointment of Dependants of Deceased Government Servants Rules, 1996, hereinafter referred to as the Rules of 1996.

I have considered the submissions, and do not find force in the contention.

True, it is that in Roop Singh's case it has been held that in such cases the matter is required to be governed under the old Rules, but then Hon'ble the Supreme Court in State of Haryana Vs. Ankur Gupta reported in JT 2003 (Suppl.1) SC-96 has thread bare considered the aspect of nature of the right of the dependants to claim appointment under the provisions of the Compassionate Rules. and has also considered the previous judgments of Hon'ble the Supreme Court on this subject being those in the cases of Umesh Kumar Nagpal Vs. State of Haryana reported in JT 1994(3) SC-525, Life Insurance Corporation of India Vs. Asha Ramchandra Ambedkar reported in JT 1994(2) SC-183, State of Haryana Vs. Rani Devi reported in JT 1996(6) SC-646, Union of India Vs. K.P.Tiwari reported in 2001(10) SC-264, and Director of Education (Secondary) Vs. Pushpendra Kumar reported in JT 1998(4) SC-155 etc., and had clearly laid down that the claim of the person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of **sudden crisis occurring in the family of such_ employee who has served the**

State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. **Appointment on compassionate ground cannot be claimed as a matter of right.** Then referring to Pushpendra Kumar's case it was noticed that as under:-

"in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment."

At this place I may also refer to yet another judgment of Hon'ble the Supreme Court in State of U.P. Vs. Paras Nath reported in 1998(2) SCC-412 wherein it was held that the purpose of providing employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In the present case, the application has been made after around 12 years of death. Thereafter in P.N.B. Vs. Ashwini Kumar reported in JT 2004(6)SC-418 again the principles were considered, the earlier judgments were recapitulated, and on

consideration of the principles, the compassionate appointment granted by the High Court was judged and set aside.

Thus, in view of the consistent judgments of Hon'ble the Supreme Court right upto the year 2004, Roop Singh's judgment cannot be said to be holding water any more. That apart, even under 1975 Rules, the provision was to give appointment to one of the dependants of the deceased. Thus, on the face of the judgment of Hon'ble the Supreme Court, and the philosophy propounded therein the compassionate appointment cannot be insisted upon as a matter of right, and on that basis it cannot be said the petitioner's case was required to be considered under 1975 Rules only. It is significant to note that in the present case as appears from Annexure-6 that the deceased had left three daughters and one son, and according to the recitals the son in the moment wants to carry on further education, and out of the three daughters being aged 24, 22 and 19 years, she is applying for employment of one daughter, in view of the weak financial condition of the family. Significantly, in this application the mother who has moved the application has not disclosed about her being already in Government employment. It is obvious that by the time this application Annexure-6 was moved 12 years had elapsed since the death of the deceased, and in view of the fact that wife of the deceased was already in government employment it cannot be said that the family is in such a harness as may require appointment to be given to third issue of the deceased, when the mother of the petitioner is already in government employment.

Thus, I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

(N P GUPTA), J.